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A

PLEA

FOR THE

Pardoning Part

OF THE

SOVERAIGNTY

OF THE

KINGS

OF

ENGLAND.

LONDON,

Printed by *H. H.* for *John Fiſh*, near the Golden-Tun, in the *Strand*, 1682.

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A PLEA for the Pardoning Part of the Soveraignty *of the* Kings *of* England.

IF *Monarchy* hath been by God himself, and the experience of above 5000 years and the longest Ages of the World approved (as it hath) to have been the best and most desirable form of Government.

And the Kingdom of *England*, as it hath been, for more than 1000 years a well tempered *Monarchy*, and the Sword and Power thereof was given to our Kings only by God that ruleth the Hearts of them.

The means thereunto which should be the Power of Punishment and Reward, can no way permit, that they should be without the Liberty and Prerogative of Pardoning, which was no Stranger in *England* long before the Conquest, in the Reign of King *Athelstane*, who did thereby free the Nation from four-footed Wolves by

ordaining Pardons to ſuch Out-laws as would help to free themſelves and others from ſuch villanous Neighbours, the Laws of *Canutus* alſo making it a great part of their buſineſs to injoyn a moderation in punishments *ad divinam clementiam temperata* to be obſerved in Magiſtracy and never to be wanting in the moſt Superior, none being ſo proper to acquit the offence as they that by our Laws are to take benefit by the Fines and Forfeitures ariſing thereby. *Edward* the Confeſſors *Law* would not have *Rex regni ſub cujus protectione & pace degunt univerſi*, to be without it; when amongſt his Laws which the People of *England* held ſo facred as they did hide them under his *Shrine*, and afterwards *precibus & ſletibus* obtained of the *Conqueror*, that they ſhould be obſerved, and procured the obſervation of them eſpecially to be inſerted in the *Coronation-Oaths* of our ſucceeding Kings, inviolably to be kept.

Ll. Canuti.

And it is under the Title of *miſericordia Regis & Pardonatio*, declared, That *Si quiſpiam forisfactus* (which the Margin interpreteth *rei Capitalis reus*) *popoſcerit Regiam miſericordiam pro forisfacto ſuo, timidus mortis*

Ll. Edwardi Confeſſor. p. 19.

tis vel membrorum perdendorum, poteſt Rex ei lege ſuæ dignitatis condonare ſi velit etiam mortem promeritam; ipſe tamen malefactor rectum faciat in quantumcunque poterit quibus forisfecit, & tradat fidejuſſores de pace & legalitate tenenda ſi vero fidejuſſores defecerint exulabitur a Patria.

For the pardoning of Treaſon, Murder, breach of the Peace, &c. ſaith King *Henry* the Firſt, in his Laws, ſo much eſteemed by the Barons and Contenders for our *Magna Charta*, as they ſolemnly ſwore they would live and die in the defence thereof, do ſolely belong unto him, *& ſuper omnes homines in terra ſua.* Ll. H. 1.

In the fifth year of the Reign of King *Edward* the Second, *Peirce Gaveſton* Earl of *Cornewall*, being baniſhed by the King in Parliament, and all his Lands and Eſtate ſeized into the Kings hands, the King granted his Pardon, remitted the Seizures, and cauſed the Pardon and Diſcharges to be written and Sealed in His *Preſence*. *Rot. Clauſ.* 5 E. 2. *in dorſo, m.* 15.

And howſoever he was ſhortly after upon his return into *England*, taken by the Earl of *Warwick* and beheaded without *Proceſs* or Judgment at Law, yet he and his Com-

plices

plices thought themſelves not to be in any ſafety, until they had by two Acts of Parliament in the ſeventh year of that Kings Reign obtained a Pardon, *Ne quis occaſionetur pro reditu & morte Petri de* Gaveſton, the power of pardoning, being always ſo annexed to the King and his Crown and Dignity.

As the Acts of Parliament of 2 *E.* 3. *ca.* 2. 10 *E.* 3. *ca.* 15. 13 *R.* 2. *ca.* 1. and 16 *R.* 2. *ca.* 6. ſeeking by the Kings Leave and Licence in ſome things to qualifie it, are in that of 13 *R.* 2. *ca.* 1. content to allow the Power of Pardoning to belong to the Liberty of the King, and a Regality uſed heretofore by his Progenitors.

Hubert de Burgh Earl of *Kent* Chief *Juſticiar* of *England*, in the Reign of King *Henry* the third, laden with envy and as many deep Accuſations as any *Miniſter* of *State* could lie under, in two ſeveral Charges in ſeveral Parliaments, then without an Houſe of Commons, had the happineſs, notwithſtanding all the hate and extremities put upon him by an incenſed Party, to receive two ſeveral Pardons of his and their King, and dye acquitted in the Eſtate which he had gained.

Mat. Paris.

In

In the fiftieth year of the Reign of King *Edward* the third, the Commons in Parliament petitioning the King, that no Officer of the Kings, or any man, high or low, that was impeached by them, should enjoy his Place or be of the Kings Council. The King only answered, he would do as he pleased. *Rot. part. 50 E. 3.*

With which they were so ill satisfied, as the next year after, in Parliament, upon better consideration, they petitioned him, that *Richard Lyons*, *John Pechie*, and *Alice Pierce*, whom they had largely accused and believed guilty, might be pardoned. *Rot. part. 51 E. 3.*

And that King was so unwilling to bereave himself of that one especial Flower in his Crown, as in a Grant or Commission made in the same year to *James Butler* Earl of *Ormond* of the Office of *Chief Justiciar* of *Ireland* giving him power under the Seal of that Kingdom to pardon all Treasons, Felonies, Murders, Treasons, &c. he did especially except and reserve to himself the power of pardoning Prelates, Earls and Barons. *Rot. Clauſ. 51 E. 3.*

In the first year of the Reign of King *Henry* the fourth, the King in the Case of the Duke of *Albemarle* and others, declared in *Rot. part. 1 H. 4.*

Par-

Parliament that Mercy and Grace belongeth to Him and his Royal Estate, and therefore reserved it to himself, and would that no man entitle himself thereunto.

And many have been since granted by our succeeding Kings in Parliament, at the request of the Commons (the *People* of *England* in Worldly and Civil Affairs as well ever since, as before, not knowing unto whom else to apply themselves for it.)

So as no fraud or indirect dealings being made use of in the obtaining of a *Pardon*, it ought not to be shaken or invalidated, whether it were before a Charge or Accusation in *Parliament* or after, or where there is no Charge or Indictment antecedent.

The *Pardon* of the King to *Richard Lyons* at the request of the *Commons* in *Parliament*, as the *Parliament* Rolls do mention, although it was not inserted in the *Pardon*, was declared to be after a Charge against him by the *Commons* in *Parliament*, and in the percloſe said to be *per Dominum Regem.*

And a second of the same date and tenor, with a percloſe said to have been *per Dominum Regem & magnum Concilium.*

John

John Peebles pardon for whom that House of Commons in Parliament was said to intercede, only mentioneth that it was *precibus aliquorum Magnatum.*

15 E. 3. The *Archbishop of Canterbury* before the King, Lords, and Commons humbling himself before the King Lords and Commons; desired that where he was defamed through the Realm he might be larraigned before his Peers in open Parliament unto which the King answered, that He would attend the Common affairs, and afterward hear others. Rot. part. 15 E. 3.

5 H. 4. The King at the request of the Commons affirmeth the *Archbishop of Canterbury*, the *Duke of York*, the Earl of *Northumberland*, and other Lords, which were suspected to be of the confederacy of *Henry Percy*, to be his true Leige-men, and that they nor any of them should be impeached therefore, by the King or his Heirs in any time ensuing. Rot. parl. 5 H. 4.

9 H. 4. The *Speaker* of the House of *Commons* presented a Bill on the behalf of *Thomas Brooke* against *William Widecombe*, and required Judgement against him; which Bill was received and the said *William Wide-* Rot. part. 9. H. 4.

combe was notwithstanding bound in a 1000 pound to hear his Judgment in Chancery.

Rot. part. 38 H. 6. And the many restorations in blood and estate in 13 *H.* 4 and by King *E.* 4 and of many of our Kings may inform us how necessary and beneficial the pardons, and mercy of our Kings and Princes have been to their People and Posterities.

The Commons accuse the Lord *Stanley* in sundry particulars, for being confederate with the *Duke of York*, and pray that he may be committed to prison: to which the King answered, he will be advised.

Rot. part. 28 H. 6. *William de la Poole* Duke of *Suffolke* being in a Parliament in the 28*th* year of the Reign of King *Henry* the 6*th* deeply charged by the Commons and not demanding his Peerage but submitting himself to the Kings grace and mercy was only banished for five years.

Whereupon the *Viscount Beaumont*, in the behalf of the Bishops and the Lords required that the said Judgment without their assent might be no barr to their priviledge of Peerage, but no saving at all either requested or granted for, or by the Commons.

And Pardons before Indictments or prosecution have not been rejected for that they

did

did anticipate any troubles which might afterwards happen.

For so was the *Earl of Shrewsbury's* in the Reign of Queen *Elizabeth* for fear of being troubled by his ill willers for a sudden raising of men without a warrant to suppress an insurrection of Rebels.

Lionell Cranfeild Earl of *Middlesex* Lord Treasurer of *England*, being about the 18th year of King *James*, accused by the Lords & Commons in Parliament, for great offences and misdemeanours fined by the King in Parliament to be displaced, pay 50000 *l.* and never more to sit in Parliament, was in the 2d year of the Reign of King *Charles* the Martyr, upon his Submission to the King and payment of 20000 *l.* only, pardoned of all Crimes, Offences and Misdemeanors whatsoever any Sentence, Act, or Order of Parliament, or the said Sentence to the contrary notwithstanding.

For whether the accusation be for Treason wherein the King is immediately and most especially concerned, or for lesser Offences where the people may have some concernment, but nothing near so much or equivalent to that of the Kings being the supreme

Magistrate, the King may certainly pardon and in many pardons as of Outlaries, Felonies, &c. there have been conditions annexed. *Ita quod stent recto si quis versus eos loqui voluerit.*

So the *Lord Keeper Coventry* in the Reign of King *Charles* the *Martyr* to prevent any dangerous questions, touching the receiving of Fines and other Proceedings in Chancery, sued out his Pardon.

The many Acts of oblivion, or general pardon, granted by many of our Kings and Princes, to the great comfort and quiet of their Subjects, but great diminution of the Crown revenue did not make them guilty, that afterwards protected themselves thereby from unjust and malicious adversaries.

And where there is not such a clause it is always implyed by Law in particular mens cases, and until the Sovereignty can be found by Law to be in the people, neither the King or his people (who by their Oaths of Allegiance and Supremacy are to be subordinate unto him) are to be deprived of his *haute et basse Justice*, and are not to be locked up or restrained by any Petition, Charge or Surmise which is not to be accompted

compted infallible, or a truth, before it be proved to the King and his Council of Peers in Parliament, and our Kings that gave the Lords of Manors, Powers of *Soke* and *Sake*, *Infangtheif*, and *Outfangtheif* in their Court Barons, and sometimes as large as *Fossarum & Furcarum*, and the incident Power of Pardons and Remissions of Fine and Forfeitures which many do at this day without contradiction of their other Tenants enjoy, should not be bereaved of as much liberty in their primitive and supream Estates as they gave them in their derivatives.

And though there have been revocations of Patents during pleasure, of Protections and Presentations, and Revocations of Revocations *quibusdam certis de causis*, yet never was there any Revocation of any Pardons granted where the King was not abused or deceived in the granting thereof.

For in Letters Patents for other matters Reversals were not to be accounted legal, where they were not upon just causes proved upon Writs of *Scire facias* issuing out of the Chancery, and one of the Articles for

the

the deposing of King *Richard* the 2*d.* being that he revoked some of his Pardons.

The *recepi's* of Patents of *P*ardon, or other things were ordained so to signifie the time when they were first brought to the Chancellour, as to prevent controversies concerning priority or delays, made use of in the Sealing of them. to the detriment of those that first obtained them.

And the various forms in the drawing or passing of Pardons as long ago *His testibus*, afterwards *per manum* of the Chancellour or *per Regem* alone, *per nostre Main, vel per manum Regis*, or *per Regem & Concilium*, or *authoritate Parliamenti, per Regem & Principem, per Breve de privat. sigillo*, or *per immediate Warrant* being never able to hinder the *energy* and true meaning thereof.

And need not certainly be pleaded in any subordinate Court of Justice without an occasion or to purchase their allowance who are not to controul such an Act of their Sovereign.

Doctor *Manwaring* in the fourth or sixth Year of the Reign of King *Charles* the *Martyr* being grievously fined by both Houses of *P*arliament, and made incapable of any place

place or Imployment; was afterwards pardoned and made Bishop of St. *Asaph* with a *non obstante* of any order or Act of Parliament.

So they that would have Attainders pass by Bill or Act of Parliament to make that to be Treason which by the Law and antient and reasonable Customs of *England*, was never so before to be believed or adjudged, or to Accumulate Trespasses and Misdemeanors to make that a Treason which singly could never be so, either in truth, Law, right, reason or Justice.

May be pleased to admit and take into their serious consideration, that Arguments *a posse ad esse*, or *ab uno ad plures*, are neither usual or allowable, and that such a way of proceeding will be as much against the Rules of Law, Honour, and Justice as of Equity and good Conscience.

And may be likewise very prejudicial to the very ancient and honourable *House* of *Peers* in *Parliament*, for these and many more to be added Reasons, *viz.*

For former Ages knew no Bills of Attainder, by *Act* of *Parliament* after an Acquittal or Judgment in the *House* of *Peers*, until that

unhappy

unhappy one in the latter end of the Reign of King *Charles* the *Martyr*, which for the unuſalneſs thereof had a ſpecial *Proviſo* inſerted, That it ſhould not hereafter be drawn into Examples or made uſe of a Preſident.

And proved to be ſo fatally miſchievous to that bleſſed King himſelf, and His three Kingdoms of *England*, *Scotland* and *Ireland*, as he bewailed in his excellent Soliloquies, and at his Death, his conſenting to ſuch an Act, and charged His Majeſty that now is, never to make Himſelf or His People, to be partakers of any more ſuch Miſchief procuring State-Errors.

The Houſe of Commons if they will be Accuſers, wherein they may be often miſtaken, when they take it from others, and have no power to examine upon Oath, wild and envious Informations, and at the ſame time a part of the Parliament, ſubordinate to the King, will in ſuch an Act of Attainder be both Judge and Party, which all the Laws in the World could never allow to be juſt.

And ſuch a courſe, if ſuffered, muſt needs be derogatory and prejudicial to the Rights and

and Priviledges, and Judicative Power of the Peers in Parliament, unparallelled, and unpresidented, when any Judgments given by them, shall by such a Bill of Attainder, like a Writ of Error, or as an Appeal from them to the House of Commons, be enervated or quite altered by an Act of Attainder framed by the House of Commons, whereby they which shall be freed or absolved by their Peers, or by that Honourable and more wise Assembly, shall by such a *back* or *by-blow* be condemned, or if only Fined by the House of Peers, may be made to forfeit their Lives, Estates and Posterities by the House of Commons; or if condemned in the Upper House, be absolved in the Lower, who shall thereby grow to be so formidable as none of the Peerage, or Kings Privy-Council shall dare to displease them, and where the *dernier Ressort*, or Appeal, was before and ought ever to be to the King in His House of Peers, or without, will thus be lodged in the House of Commons, and of little avail will the Liberty of our Nobility be to be tryed by their own Peers, when it shall be *contre cæur*, and under the Control of the House of Commons.

Or that the Commons disclaiming, as they ought, any power or Cognisance in the matters of War and Peace, should by a Bill of Attainder make themselves to be Judges and Parties against a Peer, both of the Kings Privy Council and Great Council in Parliament, touching Matters of that Nature.

For if the *Commons* in *Parliament* had never after their own Impeachments of a *Peer* or *Commoner*, Petitioned the King to pardon the very Persons which they had Accused, as they did in the Cases of *Lyons* and *John Pechie*, in the 51 year of the Reign of King *Edward* the Third, whom they had fiercely accused in *Parliament* but the year before, the Objection that a *Pardon* ought not to be a Bar against an Impeachment might have had more force than it is like to have.

Neither would it or did it discourage the exhibiting any for the future, no more than it did the many after Impeachments, which were made by the *Commons* in several *Parliaments*, and Kings Reigns, whereupon punishments severe enough ensued; For if the very many Indictments and Informations at every Assizes and Quarter-Sessions in the Counties,

Counties, and in the Court of *Kings-Bench* at *Weſtminſter*, in the Term time, ever ſince the Uſurpation and Reign of King *Stephen*, and the *Pardons* granted ſhall be exactly ſearched and numbred, the foot of the Accompt will plainly demonſtrate, that the *Pardons* for Criminal Offences have not been above or ſo many as one in every hundred, or a much ſmaller and inconſiderable number, either in or before the firſt or later inſtance, before Tryal or after, and the *Pardons* granted by our Kings, ſo few and ſeldom, as it ought to be confeſt, that that Regal Power only proper for Kings, the Vicegerents of God Almighty, not of the People, hath been modeſtly and moderately uſed, and that the multitude of Indictments and Informations, and few Pardons now extant in every year, will be no good Witneſſes of ſuch a cauſeleſly feared diſcouragement.

And it will not be ſo eaſily proved, as it is fancied that there ever was by our Laws or reaſonable Cuſtoms any Inſtitution to preſerve the Government by reſtraining the Prince, againſt whom and no other the Contempt and Injury is immediately com-

mitted from pardoning offences againſt Him, and in Him againſt the People to whoſe charge they are by God intruſted.

Or that there was any ſuch inſtitution (which would be worth the ſeeing if it could be found or heard of) that it was the Chief, or that without it conſequently the Government it ſelf would be deſtroyed.

To prove which groundleſs Inſtitution the Author of thoſe Reaſons is neceſſitated (without reſorting as he ſuppoſeth to greater Antiquities) to vouch to Warranty the Declaration of that excellent Prince, King *Charles* the Firſt of Bleſſed Memory, made in that behalf (when there was no Controverſie or Queſtion in agitation or debate touching the power of pardoning) in his Anſwer to the nineteen Propoſitions of both *Houſes* of *Parliament*, wherein ſtating the ſeveral parts of this well regulated Monarchy, he ſaith, the King, the Houſe of Lords, and the Houſe of Commons, have each particular *Priviledges*.

Wherein amongſt thoſe which belong to the King, he reckons the power of pardoning, if the Framer of thoſe Reaſons might have been fair and candid, and added the Words

Words immediately following, *viz.* And ſome more of the like kind are placed in the King.

And this kind of excellently tempered *Monarchy*, having the power to preſerve that Authority, without which it would be diſabled to protect the Laws in their Force, and the Subjects in their Peace, Liberties, and Properties, ought to have drawn unto Him ſuch a reſpect and reverence from the Nobility and Great Ones, as might hinder the Ills of Diviſion and Faction; and cauſe ſuch a Fear and Reſpect from the People as may hinder Tumults and Violence.

But the deſign being laid and deviſed to tack and piece together ſuch parcels of His ſaid late Majeſties Anſwer, as might make moſt for the advantage of the Undertaker to take the Power of Pardoning from the Prince, and lodge it in the *People*, and do what they can to create a Soveraignty or Superiority in them, which cannot conſiſt with his antient Monarchy, and the Laws and reaſonable Cuſtoms of the Kingdom, the Records, Annals and Hiſtories, Reaſon, Common-Senſe and underſtanding thereof, the long and very long approved uſages

of

of the Nation, and Oaths of Allegiance and Supremacy of thoſe that would now not only deny but be above it.

And would make the King, by ſome ſcattered or diſtorted parts of that Anſwer, mangled and torn from the whole context and purpoſe of it, to give away thoſe undoubted Rights of his Crown, for which, and the preſervation of the Liberties of His People, he died a *Martyr*; the Author and his Party endeavouring all they can to tranſlate the Aſſent of the *Commons* required in the levying of Money into that of the power of pardoning, and jumbling the Words and Senſe of that Royal Anſwer, cements and puts together others of their own to fortifie and make out their unjuſt purpoſes, omitting every thing that might be underſtood againſt them, or give any diſturbance thereunto.

And with this reſolution the Author proceedeth to do as well as he can, and ſaith:

After the enumeration of which, and other His Prerogatives, His ſaid Majeſty adds thus; Again (as if it related to the matter of pardoning which it doth not at all, but only and properly to the levying of Money

Money, wherein that Misinterpreter can afford to leave out His said Majesties Parenthesis (*which is the Sinews as well of Peace as War*) that the Prince may not make use of this high and perpetual Power to the hurt of those for whose good he hath it, and make use of the Name of Publick Necessity (which clearly evidenceth that his late Majesty thereby only intended that part of his Answer to relate to the levying of Money) for the gain of his private Favorites and Followers to the detriment of his People.

Exact Collection of Remonstrances, Declarations and Messages betwixt his late Majesty and the Parliament, Printed by Order of the Commons in Parliament, 24 March, 1642.

Whither being come, our Man of Art or putter of his Matters together, finds some words which will not at all serve his turn inclosed in a Royal Parenthesis of his late Majesty, *viz.* (*An excellent Conserver of Liberty, but never intended for any share in Government, or the choosing of them that should govern*) but looked like a deep and dangerous Ditch which might *Sowse him over head and ears*, if not drown him and spoil all his inventions, and therefore well bethinks himself, retires a little, begins at An excellent Conserver of Liberty, makes that plural, adds, *&c.* which is not in the Original, fetches his *feeze* and leaps quite over.

over all the reſt of the Parentheſis, as being a *Noli me tangere*, dangerous words and of evil conſequence, and having got over goeth on until he came to ſome juſt and conſiderable expoſtulations of his late Majeſty, and then as if he had been in ſome *Lincolnſhire* Fens and Marſhes, is again enforced to leap until he come to, Therefore the Power legally placed in both Houſes, is more than ſufficient to prevent and reſtrain the Power of Tyranny.

But not liking the ſubſequent words of his late Majeſty, *viz. And without the Power which is now asked from Us, we ſhall not be able to diſcharge that Truſt which is the end of Monarchy, ſince that would be a total ſubverſion of the Fundamental Laws, and that excellent Conſtitution of this Kingdom, which hath made this Nation for many years both famous and happy to a great degree of envy*, is glad to take his leave with an, *&c.* and meddle no more with ſuch Edge-Tools, wherewith that Royal Anſwer was abundantly furniſhed.

But looks back and betakes himſelf to an Argument framed out of ſome Melancholick or Feveriſh Fears and Jealouſies, that until the *Commons* of *England* have right done

done unto them againſt that *Plea of Pardon*, they may juſtly apprehend that the whole Juſtice of the Kingdom in the Caſe of the *five Lords*, may be obſtructed and defeated by Pardons of a like nature.

As if the pardoning of one muſt of neceſſity amount to many, or all, in offences of a different nature committed at ſeveral times by ſeveral perſons (which is yet to be learned) and the Juſtice of the Nation which hath been ſafe and flouriſhed for many Ages, notwithſtanding ſome neceſſary Pardons granted by our Princes, can be obſtructed or defeated in a well conſtituted Government under our Kings and Laws; ſo it may everlaſtingly be wondred upon what ſuch jealouſies ſhould now be founded, or by what Law or Reaſon to be ſatisfied, if it ſhall thus be ſuffered to run wild or mad.

For *Canutus* in his Laws ordained that there ſhould be in all Puniſhments a *moderata miſericordia*, and that there ſhould be a *miſericordia in judicio exhibenda*, which all our Laws, as well thoſe in the *Saxon* and *Daniſh* times as ſince, have ever intended, and it was wont to be a parcel of good *Ll.* Canusi.

Divinity that *Gods Mercy is over all his Works*, who not ſeldom qualifies and abates the rigour of his Juſtice.

When *Triſſilian* Chief Juſtice, and *Brambre* Major of *London*, were by Judgment of the Parliament of the Eleventh of King *Richard* the ſecond, Hanged and Executed, the *Duke* of *Ireland* baniſhed, ſome others not ſo much puniſhed, and many of their Complices pardoned, the people that did not know how ſoon they might want Pardons for themſelves, did not afflict themſelves or their Sovereign with Complaints and Murmurings that all were not Hanged and put to the extremities of Puniſhment; nor was *Richard* Earl of *Arundel*, one of the fierce Appellants in that Matter, vexed at the pardoning of others, when he in a Revolution and Storm of State was within ten years after glad to make uſe of a Pardon for himſelf.

Rot parl. 21 R. 2.

King *James* pardoned Sir *Walter Rawleigh*, the Lord *Cobham*, Sir *Griffin Markham* with many others then guilty of Treaſon, and the Earl of *Somerſet* and his Lady, for the Murder of Sir *Thomas Overbury*, without any commotion in the Brains of the

the reſt of his Subjects, ſome of whom were much diſturbed that he after cauſed Sir *Walter Rawleigh* to be executed for a ſecond offence upon the Score of the former, not at all pardoned, but reprieved or only reſpited.

And therefore whileſt we cry out and wonder *quantum mutantur tempora*, may ſeek and never find what ever was or can be any neceſſary cauſe or conſequence that the *five Lords* accuſed of High Treaſon, and a deſign of killing the King, will be ſure to have a Pardon, if that the Pardon of the Earl of *Danby*, whoſe deſign muſt be underſtood by all men rather to preſerve him, ſhall be allowed.

Nor doth an Impeachment of the Houſe of Commons virtually, or ever can from the firſt Conſtitution of it be proved or appear to be the voice of every particular Subject of the Kingdom; for if we may believe Mr. *William Pryn*, one of their greateſt Champions, and the Records of the Nation and Parliaments, the Commons in Parliament do not, or ever did Repreſent, or are Procurators for the Lords Spiritual and Temporal and their numerous Tenants

and ancient Baronies, and thoſe that hold or do now hold in *Capite*, nor for the many Tenants that ſhould be of the Kings ancient Demeſne and Revenues, nor for the Clergy, the multitude of Copyholders heretofore, as much as the fourth part of the Kingdom, neither the great number of Leaſe-holders, Cottagers, *&c.* that are not Freeholders, Citizens or Trades-men, nor can all the Members of the Body Politick be equally wounded in their Eſtates or concernments by the vain imaginations, cauſleſs fears, and jealouſies and bugbears of other ſeditious or fanciful Mens own making.

Pryns 4 *part of his Regiſter of Parliament Writs.*

And to men that have not yet proceeded ſo far in the School of *Revelation* as to be ſure of the Spirit of Propheſie, it may prove a matter of ill conſequence that the univerſality of the People ſhould have occaſion miniſtred and continued to them to be apprehenſive of utmoſt dangers from the Crown, from whence they of right expect Protection.

And a Wonder next a Miracle, from whence the Premiſſes to ſuch a trembling and timorous concluſion can be fetched, or how a People, whoſe valiant and wiſer Fore-

fathers

fathers were never heretofore ſcared with ſuch *panick fears*, nor wont to be affrighted with ſuch *Phantaſmes*, ſhould now ſuſpect they can have no Protection from the Crown, when ſome of them do at the ſame time labour all they can to hinder it.

Or how it ſhould happen in the long Rebellious Parliament that after Mr. *Chaloner* a Linnen Draper of *London*, was hanged for Plotting a Surprize of the City of *London* and reducing it to the Kings obedience, honeſt Mr. *Abbot* the Scrivener ſhould be pardoned without any ſuch diſcontent and murmuring of the People, or that *Oliver Cromwell* ſhould not be debarred of his Power of Pardoning in his *Inſtrument of Government*, and be allowed to Pardon the Lord *Mordant* for a ſuppoſed Treaſon againſt his uſurped Authority; and our King deriving his Authority, legally veſted in Him and His Royal Anceſtors, for more than one thouſand years before, may not adventure to do it without the utter undoing and ruine of his Subjects in their Properties, Lives and Eſtates, by His pardoning of ſome Capital Offenders: Or why it ſhould not be as lawful and convenient for the

the King to grant Pardons to ſome other Men, as to Doctor *Oates* or Mr. *Bedlow*.

When no Hiſtories *Jewiſh*, *Pagan* or *Chriſtian*, can ſhew us a People Petitioning their Kings, that they would not Pardon, when all are not like to be Saints or Faultleſs, and it will ever be better to leave it to the Hearts of Kings, and God that directs them, than to believe Tyranny to be a Bleſſing, and Petition for it.

And the moſt exact ſearch that can be made, when it findeth the Commons petitioning in Parliament to the King or Houſe of Peers, that they may be preſent at ſome Tryals there, upon their Impeachments, cannot meet with any one Preſident where they ever deſired, or were granted ſuch a reaſonleſs Requeſt, purſued and ſet on by other Mens Deſigns to have one Mans Tryal had before another, and by ſtrugling and wreſtling for it, expoſe the King and Kingdom to an utter deſtruction.

And therefore in thoſe their fond importunities might do well to tarry until they can find ſome Reaſon why the Lords Spiritual may not Vote or Sit as Judges or Peers in Parliament, in the Caſe of the *five Lords*, as well as of the Earl of *Danby*. Or

Or any Preſident that it is or hath been according to Parliamentary proceedings to have any ſuch Vote or Requeſt made by the Commons in Parliament.

Who neither were or ſhould be ſo omnipotent in the opinion of *Hobart* and *Hutton* and other the learned Judges of *England*, as to make a Puniſhment before a Law, or Laws with a Retroſpect, which God himſelf did never allow, but ſhould rather believe that Laws enacted contrary to the *Laws of God* and *Morality*, or that no Aids or Help are to be given to the King *pro bono publico*, or that there ſhould be no Cuſtoms or Preſcription, or that the King ſhould be governed by His People, would be ſo far from gaining an Obedience to ſuch Laws or Acts of Parliament as to render them, to be *ipſo facto* null and of none effect.

When the King hath been as careful to diſtribute Juſtice as his Mercy, without violence to his Laws and well-inform'd Conſcience hath ſometimes perſwaded him to Pardon, to do Juſtice, or to cauſe it to be done in a legal and due manner, and is ſo appropriate to the Office and Power of a King, ſo annext, appendant and a part of

it

it, as none but His Delegates are to intermeddle or put any limits thereunto, and if it ſhould not be ſo ſolely inherent in Him would be either in abeyance or no where.

Prins *Animad.* upon Cokes 4 *Inſtit.*

For the Houſe of Commons are neither a Judicature or ſworn to do Juſtice, and if they were, would be both Judges and Parties, and the Lords Spiritual and Temporal are not as to particular proceedings ſworn but meerly conſultive; So as Juſtice can veſt in none but the King, who is by his Coronation-Oath only ſworn to do it, if His Right of Inheritance and greater Concernments than any of His Subjects, did not abundantly ingage and prompt Him thereunto; and is therefore ſo every way, and at all times obliged to do Juſtice and Protect the Lives, Eſtates, Peace and Liberty of His Subjects, as he is with all convenient ſpeed and haſt to Try or bring to Judgment, a Subject accuſed of Treaſon by the Houſes of Lords and Commons, both or either of them in His Court of *Kings-Bench* before the Juſtices thereof, or by ſpecial Commiſſion by a Lord High Steward in or without the time of Parliament.

And

And the King may acquit (which amounteth to a Remiſſion or Pardon) by a more Supreme Authority than any of His Judges (ſome particular Caſes wherein Appeals are, or may be brought, only excepted) do ordinarily by an authority derived from no other, not to be debarred by probabilities, or poſſibilities, or by conſequences, not always to be foreſeen or avoided.

For a Man pardoned for Man-ſlaughter, may be ſo unhappy as in the like manner afterwards to be the death of five or ten more; 20000 Rebells pardoned at a time as in the Inſurrections of *Wat Tyler*, *Jack Cade*, *&c.* may be guilty of the like Offence, twenty or forty years after: The Lord Mayor of *London* that hath an allowance of Tolls and Profits to take a care of the City and wholſomneſs of Food, might be, as they are, too much careleſs and undo them in their Health and well being.

The Judges may as thoſe in the Reign of King *Edward* the Firſt, and *Thorp* in the Reign of King *Edward* the Third, be guilty of Miſdemeanours, yet that is not to bereave us of that good which better Men

may do us in their administration of Justice, our Kings have granted Priviledges, to certain Cities and Towns not to pay Subsidies, and granted Pardons as their Mercies and right reason inclined them, in the course of their several Reigns for many Ages last past, yet have not acquitted or left unpunished all the Offenders ever since, there being a greater likelyhood that they would not be so easie in pardoning, where they were to gain so much by Attainders, Fines and Forfeitures.

And therefore *panick* & vain Fears, such as *in constantem virum cadere non possunt*, should not be permitted to affright our better to be imployed Imaginations, unless we had a mind to be as wise as a small and pleasant Courtier of King *Henry* the Eighths who would never endure to pass in a Boat under *London*-Bridge left it should fall upon his Head, because it might once happen to do so.

Our *Magna Charta's* and all our Laws which ordain *no man to be condemned or punished without Tryal by his Peers*, do allow it where it is by Confession, Outlawry, *&c.* and no Verdict.

Did

Did never think it fit that Publick Dangers, ſuch as Treaſon ſhould tarry, where Juſtice may as well be done otherwiſe without any preciſe Formalities to be uſed therein.

For although it may be beſt done by the advice of the Kings greateſt Council the *Parliament*, there is no Law or reaſonable Cuſtom of *England* either by Act of Parliament, or without, that reſtrains the King to do it only in the time of *Parliament*.

When the Returns, Law-Days and Terms appointed and fixt, have ever given place to our Kings Commiſſions of *Oyer* and *Terminer*, Inquiries, *&c.* upon ſpecial and emergent occaſions.

And notwithſtanding it will be always adviſeable that Kings ſhould be aſſiſted by their greateſt Council, when it may be had, yet there is no Law or Act of Parliament extant, or any right reaſon or conſideration to bind Him from making uſe of His ordinary Council in a Caſe of great and importunate neceſſity for the Tryal of Peers by their Peers, before a *Lord High Steward*, attended by the Kings learned Judges of the Law.

For Caſes of Treaſon, Felony and Treſpaſs, being excepted out of Parliament, firſt and laſt granted and indulged Priviledges by our and their Kings and Princes, there can be no ſolid Reaſon or cogent Argument to perſwade any man that the King cannot for the preſervation of Himſelf and His People, in the abſence or interval of Parliaments, puniſh and try Offenders in Caſes of Treaſon, without which there can be no Juſtice, Protection or Government, if the Power of the King and Supreme Magiſtrate ſhall be tyed up by ſuch, or the like as may happen, Obſtructions.

So until the Honourable Houſe of Commons can produce ſome or any Law, Agreement, Pact, Conceſſion, Liberty or Priviledge to Sit and Counſel the King, whether he will or no, as long as any of their Petitions remain unanſwered (which they never yet could or can) (thoſe grand Impoſtures and Figments of the *Modus tenendi Parliamenta* and the ſuppoſed *Mirror of Juſtice*, being as they ought to be rejected) when the Parliament Records will witneſs that many Petitions have, for want of time (moſt of the ancient Parliaments not

expending

expending much of it) been adjourned to be determined in other Courts, as in the Caſe of *Staunton* in 14 *E.* 3. and days have been limited to the Commons for the exhibiting of their Petitions; the Petitions of the *Corbets* depended all the Reigns of King *Edward* the Firſt and Second, until the eleventh year of *Edward* the Third, which was about ſixty ſix years, and divers Petitions not diſpatched, have in the Reign of King *Richard* the Second, been by the King referred to the *Chancellor* and ſometimes with a direction to call to his aſſiſtance the *Juſtices* and the *Kings Serjeants* at *Law*, and the Commons themſelves have at other times prayed *to have their Petitions determined by the Councel of the King* or by the *Lord Chancellor*. And there will be reaſon to believe that in Caſes of urgent neceſſity for publick ſafety, the King is & ought to be at liberty to try & puniſh great and dangerous Offenders without His Great Council of Parliament.

The Petitions in *Parliament* touching the pardoning of *Richard Lyons*, *John Peachie*, *Alice Peirce*, *&c.* and a long proceſs of *William Montacute* Earl of *Salisbury* were renewed and repeated again in the *Parliament*

liament of the first of *Richard* the Second, because the *Parliament* was ended before they could be answered.

Anno 1. of King *Richard* the Second, *John* Lord of *Gomenez* formerly committed to the Tower for delivering up of the Town of *Ardes* in that Kings time, of which he took upon him the safe keeping in the time of King *Edward* the Third, and his excuse being disproved, the Lords gave Judgment that he should dye, but in regard he was a *Gentleman* and a *Baronet* and had otherwise well served, should be beheaded and Judgment respited until the King should be thereof fully informed, and was thereupon returned again to the *Tower*.

Rot. parl.

King *Henry* the Second, did not tarry for the assembling a Parliament to try *Henry de Essex*, his Standard-bearer, whom he disherited for throwing it down and affrighting his *Host* or disheartning it.

16 *E.* 2. *Henry de bello monte* a Baron refusing to come to Parliament upon Summons was by the King, Lords and Council, and the Judges, and Barons of the Exchequer then assisting committed for his contempt to Prison.

Anno

Anno 3 *E.* 3. the Biſhop of *Winchester* was indicted in the *Kings-Bench* for departing from the Parliament at *Salisbury*.

Neither did *Henry* the Eight forbear the beheading of His great Vicar-General *Cromwell*, upon none or a very ſmall evidenced Treaſon, until a Parliament ſhould be Aſſembled.

The Duke of *Somerſet* was Indicted of Treaſon and Felony, the ſecond of *December*, *Anno* 3 & 4 *Edwardi* 6. ſitting the Parliament, which began the fourth day of *November*, in the third year of His Reign, and ended the firſt day of *February* in the fourth, was acquitted by his Peers for Treaſon, but found guilty of Felony, for which neglecting to demand his Clergy he was put to Death.

In the Reign of King *Philip* and Queen *Mary*, thirty nine of the Houſe of Commons in Parliament (whereof the famous Lawyer *Edmond Plowden* was one) were Indicted in the Court of *Kings-Bench*, for being abſent without Licenſe from the Parliament. Cokes 4 *part of the Inſtitutes.*

Queen *Elizabeth* Charged and Tryed for Treaſon, and Executed *Mary* Queen of *Scots* her

her Feudatory, without the Advice of Parliament, and did the like with *Robert* Earl of *Eſſex* her ſpecial Favourite, for in ſuch Caſes of publick and general Dangers, the ſhorteſt delays have not ſeldom proved to be fatally miſchievous.

And howſoever it was in the Caſe of *Stratford*, Archbiſhop of *Canterbury* in the fifteenth year of the Reign of King *Edward* the Third, declared that the Peers *de la terre ne doivent eſtre areſtez ne meſnez en Jugement, Si non en Parlement & par leur Pairres*, yet when there is no Parliament, though by the Common-Law their Perſons may not then alſo be Arreſted at a common perſons Suit, they may by other ways be brought to Judgment in any other Court.

And Charges put in by the Commons in the Houſe of Peers, againſt any of the Peers have been diſſolved with it.

Cokes 4 *part of the Inſtitutes Tit. Parliament.*

For Sir *Edward Coke* hath declared it to be according to the Law and reaſonable Cuſtoms of *England*, followed by the modern practice, that the giving any Judgment in Parliament doth not make is a Seſſion, and that ſuch Bills as paſſed in either or both Houſes, and had no Royal Aſſent unto

unto them, muſt at the next Aſſembly begin again; for every Seſſion of Parliament is in Law (where any Bill hath gained the Royal Aſſent, or any Record upon a Writ of Error brought in the Houſe of Peers hath been certified) is and hath been accompted to have been a Seſſion.

And although ſome of this later quarrelling Age have Eſpouſed an Opinion, too much inſiſted upon, that an Impeachment brought by the Houſe of Commons againſt any one makes the ſuppoſed Offence, until it be Tryed, unpardonable.

A Reaſon whereof is undertaken to be given, becauſe that in all Ages it hath been an undoubted Right of the Commons to Impeach before the Lords any Subject for Treaſon or any Crime whatſoever.

And the Reaſon of that Reaſon is (ſuppoſed to be) becauſe great Offences complained of in Parliament, are moſt effectually determined in Parliament.

Wherein they that are of that Opinion may be intreated to take into their more ſerious conſideration;

That there neither is, nor ever was, any Houſe

or Members of Commons in Parliament, before the Impriſonment of King *H.* 3. by a Rebellious part of his Subjects, in the Forty ninth year of his Reign, or any kind of fair or juſt evidence for it.

Factious deſigning and fond conjectures being not amongſt good Patriots, or the Sons of Wiſdom ever accompted to be a ſufficient, or any evidence.

Nor was the Houſe of Lords from its firſt and more ancient original, intituled under their King to a Judicative Power to their Kings, in common or ordinary Affairs, but in *arduis*, and not in all things of that nature, but in *quibuſdam*, as the King ſhould propoſe and deſire their advice, concerning the Kingdom and Church, in matters of Treaſon or publick concernments, and did underſtand themſelves, and that high and honourable Court, to be ſo much forbid by Law, ancient uſage and cuſtom to intermeddle with petty or ſmall Crimes or Matters, as our Kings have ever ſince the ſixth year of the Reign of King *Edward* the firſt, ordained ſome part of the Honourable Houſe of Peers, to be Receivers and Tryers of Petitions of the Members of the Houſe

Rot. parl. 7 E. 1.

of

of Commons themſelves and others, directed to the King, to admit what they found could have no remedy in the ordinary Courts of Juſtice, and reject ſuch as were properly elſewhere to be determined, with an Indorſement of *non eſt Petitio Parliamenti.*

Which may well be believed to have taken much of its reaſon and ground from a Law made by King *Canutus* who began his Reign about the year of our Lord, 1016. *Nemo de injuriis alterius Regi queratur niſi quidem in Centuria Juſtitiam conſequi & impetrare non poterit.* LL. Canuti, 16.

For certainly, if it ſhould be otherwiſe, the reaſon and foundation of that higheſt Court would not be as it hath been hitherto, always underſtood to be with a Cogniſance only *de quibuſdam arduis*, matters of a very high nature concerning the King and the Church.

But it muſt have ſilenced all other Courts and Juriſdictions, and have been a continual Parliament, a *Goal-delivery* or an intermedler in Matters as low as Court *Leets*, or Baron and County Courts, and a *Pye-Powder Court.*

And the words of any Crime whatſoever

do not properly ſignifie great Offences, and that all great Offences do concern the Parliament, is without a Key to unlock the Secret not at all intelligible, when it was never inſtituted or made to be a Court for common or ordinary Criminals.

For the Houſe of Commons were never wont to take more upon them than to be Petitioners and Aſſenters unto ſuch things as the King by the advice of His Lords Spiritual and Temporal ſhould ordain, and obey, and endeavour to perform them.

And an Impeachment of the Houſe of Commons cannot be ſaid to be in the Name, or on the behalf of all the People of *England*, for that they never did or can repreſent the one half of them, and if they will be pleaſed to examine the Writs and Commiſſions granted by our Kings for their Election, and the purpoſe of the Peoples Election of them to be their Repreſentatives, Subſtitutes or Procurators, it will not extend to accuſe Criminals, for that appertained to the King himſelf and His Laws, care of Juſtice and the Publick; the Common People had their Inferiour Courts and Grand Juries, Aſſiſes and Goal-Deliveries to

diſpatch

diſpatch ſuch Affairs without immediately troubling Him or His Parliament, and the tenour and purpoſe of their Commiſſions and Elections to Parliament, is no more than *ad faciendum & conſentiendum iis* to obey and perform ſuch things as the King, by the advice of His Lords Spiritual and Temporal, ſhould in Parliament ordain.

For although where the Wife or Children of a Man murdered ſhall bring an Appeal, the King is debarred from giving a Pardon, becauſe by our *Saxon* Laws derived from the Laws of God, they are not to be diſturbed in that ſatisfaction which they ought to have by the loſs or death of the Man murdered. *LL.Inæ,6*

Yet the publick Juſtice will not be ſatisfied without the party offending be Arraigned and brought to Judgment for it, if the party that hath right to Appeal ſhould ſurceaſe or be bought off, ſo as an Appeal may be brought after or before the King hath Indicted, and an *auter foitz acquit* in the one caſe will not prejudice in the other, and where the Matter of Fact comes to be afterwards fully proved, and the Appeal of a Wife or Children of a Baſtard called *filius populi*,

populi, quia nullius filius, where only the King is Heir, cannot vacate or ſuperſede an Indictment of the Kings.

Neither is an Appeal upon a Crime or in criminal Matters, in the firſt inſtance to be at all purſued in Parliament, by the Statute made in the Firſt year of the Reign of King
1 H. 4. ca. 14. *H.*4 the words whereof are, *Item for many great inconveniencies and miſchiefs that often have happened by many Appeals made within the Realm of* England (to the great afflictions and calamities of the Nation, as it afterwards happened by the *Lancaſtrian* Plots and Deſigns in that miſchievous Appeal in *Anno* 11 of King *Richard* the Second) *before this time*; It is ordained and ſtabliſhed from henceforth, *That all the Appeals to be made of things done out of the Realm, ſhall be tryed and determined before the Conſtable and Marſhal of* England *for the time being*; *And moreover it is accorded and aſſented, That no Appeals be from henceforth made, or in any wiſe purſued in Parliament in any time to come.*

And therefore that allegation that the Houſe of Peers cannot reject the Impeachment of the Commons, becauſe that Suit or Complaint of the Commons can be determined

termined no where elſe, will want a better foundation (an Impeachment of the Houſe of Commons, in the Name of all the People being no other than an Appeal to the King in Parliament.)

And the Suit of ſuch as might be Appellants in another place (being there expreſly prohibited) cannot be ſuppoſed to be the concern or intereſt of all the People deſerving or requiring ſatisfaction, or eſpecially provided for by Law to have ſatisfaction, unleſs it could by any probability or ſoundneſs of Judgment be concluded that all the People of *England*, beſides Wives, Children or near Kindred and Relations (the neceſſity of publick Juſtice and deterring Examples) are or ſhould be concerned in ſuch a never to be fancied Appeal of the People. And it will be very hard to prove that one or a few are all the People of *England*, or if they could be ſo imagined, are to be more concerned than the King, who is ſworn to do Juſtice, unleſs they would claim and prove a Sovereignty and to be ſworn to do Juſtice, which though they had once by a villanous Rebellion attacked, until *Oliver Cromwel* their

Man

Man of Sin, cheated them of it; for God would never allow them any ſuch power or priviledge, or any Title to the Jeſuits Doctrine, which ſome of our Proteſtant Diſſenters, their modern Proſelites, have learned of them, that the King although he be *ſingulis major*, is *minor univerſis*.

And it is no denial of Juſtice in the Houſe of Peers to deny the receiving of an Impeachment from the Houſe of Commons, when they cannot underſtand any juſt cauſe or reaſon to receive it, and the Records, Rolls, Petitions and Orders of Parliament will inform thoſe that will be at the pains to be rightly and truly directed by them, that Petitions in Parliament have been adjourned, modified or denied; and that in the Common or Inferior Courts of Juſtice, Writs and Proceſs may ſometimes be denied, ſuperſeded or altered according to the Rules of Juſtice, or the circumſtances thereof. And our Records can witneſs, that Plaintiffs have petitioned Courts of Juſtice *recedere a brevi & impetrare aliud.*

And it cannot be ſaid that the King doth *denegare Juſtitiam*, when he would bind them unto their ancient, legal, well experimented

mented forms of ſeeking it in the purſuing their Rights and Remedies, and hinders them in nothing but ſeeking to hurt others and deſtroy themſelves.

For Juſtice no otherwiſe denied ſhould not be termed Arbitrary, until there can be ſome ſolid reaſon, proof or evidence for it.

When it is rather to be believed, that if the Factious Vulgar Rabble might have their Wills, they would never be content or leave their *fooling* until they may obtain an unbounded liberty of tumbling and toſſing the Government into as many ſeveral Forms and Methods, as there be days in the year, and no ſmaller variety of Religions.

And they muſt be little converſant with our Records, that have not underſtood that the Commons have many times received juſt denials to their Petitions, and that ſome have not ſeldom wanted the foundations of Reaſon or Juſtice.

That many of their Petitions have adopted the Concerns and Intereſts of others, that were either Strangers unto them, or the Deſigns of ſome of the grand Nobility who

thought them as neceſſary to their purpoſes as Wind, Tide, and Sails are to the ſpeeding of a Ship into the Port or Landing-places of their Deſigns.

Rot. parl. 28 H. 6. *n.* 16, 17. For upon their exhibiting in a Parliament in the 28 year of the Reign of King *Henry* the Sixth, abundance of Articles of High Treaſon, and Miſdemeanours, againſt *William de la Poole*, Duke of *Suffolk*, one whereof was that he had ſold the Realm of *England* to the *French* King, who was preparing to invade it.

When they did require the King and Houſe of Lords that the Duke (whom not long before they had recommended to the King to be rewarded for ſpecial ſervices) might be committed Priſoner to the *Tower* of *London*, the Lords and Juſtices upon conſultation, thought it not reaſonable unleſs ſome ſpecial Matter was objected againſt him.

Whereupon the ſaid Duke not putting himſelf upon his Peerage, but with proteſtation of his innocency, only ſubmitting himſelf to the Kings mercy, who acquitting him from the Treaſon and many of the Miſdemeanours, and for ſome of them by the advice of the Lords, only baniſhed him

for

for five years. And that thereupon when the Viſcount *Beaumont* in the behalf of the Lords Spiritual and Temporal required that it might be Inrolled that the Judgment was by the Kings own Rule, & not by their Aſſent, and that neither they nor their Heirs ſhould by this Example be barred of their Peerage.

No Proteſtation appears to have been made by any of the Lords Spiritual or Temporal for or on the behalf of the Commons.

Or by the Commons for themſelves.

So as a different manner of doing Juſtice can neither truly or rationally be ſaid to be an abſolute denial of Juſtice, and was never believed to be ſo by the Predeceſſors of the Houſe of Commons in Parliament in our former Kings Reigns, when ſome hundreds of their Petitions in Parliament have been anſwered by, There is a Law already provided, or let the old Law ſtand, or the King will provide a covenable or fitting remedy.

And is not likely if it were, as it is not to be, any Arbitrary Power, or any temptation or inducement thereunto, to produce any Rule or incouragement to the exerciſe of an Arbitrary Power in the Inferiour Courts, when there is none ſo weak in his Intel-

lect, but may underſtand that different Courts have ſeveral Boundaries, Methods and Forms of Proceedings, and that the Kings extraordinary great Court and Councel in His Houſe of Peers although very juſt and unarbitrary in their procedures, is ſo always ready to ſuccour the Complaints of People, as it never willingly makes it ſelf to be the cauſe of it.

And cannot miſrepreſent the Houſe of Peers to the King and his People, in the Caſe of Mr. *Fitz-Harris*, or any others, when that honourable Aſſembly takes ſo much care as it doth to repreſs Arbitrary Power, and doth all it can to protect the whole Nation from it, and many of the Houſe of Commons Impeachments have been diſallowed by the King and his Houſe of Peers in Parliament without any ground or cauſe of fear of Arbitrary Power, which can no where be ſo miſchievouſly placed, as in the *giddy multitude* whoſe Impeachments would be worſe than the *Oſtraciſme* at *Athens*, and ſo often overturn and tire all the wiſe men and good men in the Nation as there would be none but ſuch as deſerve not to be ſo ſtiled, to manage the

Affairs

Affairs of the Government, ſubordinate to their King and Sovereign.

To all which may be added, if the former Preſidents cited to aſſert the Kings Power of Pardoning aſwell after an Impeachment made by the Commons in Parliament, as before and after an Impeachment received by the Lords in Parliament, or made both by the Lords and Commons in Parliament, and after an Impeachment received by the Lords in Parliament, or made both by the Lords and Commons in Parliament be not ſufficient that of *Hugh le Deſpenſer*, Son of *Hugh le Deſpenſer*, the younger, a Lord of a great Eſtate, which is thus entred in the Parliament Roll of the fifth year of the Reign of King *Edward* the Third, ought ſurely to ſatisfie, that the Laws and reaſonable Cuſtoms of *England* will warrant it.

Anno 5 *E.*3. Sir *Eubule le Strange* and eleven other Mainpriſers, being to bring forth the Body of *Hugh* the Son of *Hugh le Deſpenſer* the younger, ſaith the Record, *A reſpondre au prochein Parlement & de eſter au droit & affaire ce & de liu en conſeil ſoit ordine & meſuerent le Corps le dit* Hugh *devant noſtre Seigneur le Roi Countes Barons & autres* *Rot. parl.* 5 E. 3. *n.* 8.

Grantz

Grantz en meſme le Parlement & monſtrent les L'res Patents du Roi de Pardon al dit Hugh *forisfacturam vite & membrorum ſectam pacis homicidia roborias Felonias & omnes tranſgreſſiones*, &c. Dated 20 *Martii* anno primo Regni ſui *Et priant a n're Seigneur le Roi quil le vouſiſt delivrer de las Mainpriſe & faire audit* Hugh *ſa grace & n're Seigneur le Roi eiant regard a ſes dites L'res & voilant utroier a la Priere le dit Mons'r Eble & autres Mainpernors avant dit & auxint de les Prelatz qui prierent molt eſpecialment pur lui ſi ad comande de ſa grace ſa delivrance. Et voet que ſes Menpernors avant ditz & cheſcun d' eux ſoient diſchargez de leur Mainpriſe & auxint & le dit* Hugh *ſoit quit & delivrers de Priſone & de garde yſſint & ſi ho'me trove cauſe devers lui autre & neſt uncore trove quil eſtoiſe au droit.*

And the *Engliſh* Tranſlator, or Abridger of the Parliament Records, hath obſerved that the old uſage was, that when any perſon being in the Kings diſpleaſure, was thereof acquitted by Tryal or Pardon, yet notwithſtanding he was to put in twelve of his Peers to be his Sureties for his good Behaviour at the Kings pleaſure.

And

And may be accompanied by the Caſe of *Richard* Earl of *Arundel* in the 22 year of the Reign of King *Richard* the Second, being Appealed by the Lords Appellant, and they requiring the King, that ſuch perſons Appealed, that were under Arreſt, might come to their Tryal, it was commanded to *Ralph*, Lord *Nevil*, Conſtable of the *Tower* of *London* to bring forth the ſaid *Richard* Earl of *Arundel*, then in his cuſtody, whom the ſaid Conſtable brought into the Parliament, at which time the Lords Appellants came alſo in their proper Perſons. To the which Earl the Duke of *Lancaſter* (who was then hatching the Treaſon which afterwards in Storms of State and Blood came to effect againſt the King) by the Kings Commandment and Aſſent of the Lords declared the whole circumſtances; after the reading and declaring whereof the Earl of *Arundel*, who in *Anno* 11 of that Kings Reign, had been one of the Appellants, together with *Henry* Earl of *Derby* ſon of the ſaid Duke of *Lancaſter*, and afterwards the uſurping King *Henry* the Fourth againſt *Robert de Vere*, Duke of *Ireland* and Earl of *Oxford*, and ſome other Miniſters of State, under King *Richard*

22 R. 2. *In the Abridgment of the Parliament Records in Engliſh ſaid to be done by Sir* Robert Cotton.

Richard the Second, alledged that he had one Pardon granted in the Eleventh year of the Reign of King *Richard* the Second, and another Pardon granted but ſix years before that preſent time. And prays that they might be allowed.

To which the Duke anſwered, that for as much as they were unlawfully made, the preſent Parliament had revoked them.

And the ſaid Earl therefore was willed to ſay further for himſelf at his peril; whereupon Sir *Walter Clopton*, Chief Juſtice, by the Kings Commandment declared to the ſaid Earl, that if he ſaid no other thing, the Law would adjudge him guilty of all the Actions againſt him.

The which Earl notwithſtanding would ſay no other thing, but required allowance of his Pardons.

And thereupon the Lords Appellant in their proper Perſons, deſired that Judgment might be given againſt the ſaid Earl as Convict of the Treaſon aforeſaid.

Whereupon the Duke of *Lancaſter*, by the Aſſent of the King, Biſhops and Lords, adjudged the ſaid Earl to be Convict of all the Articles aforeſaid, and thereby a Traytor

tor to the King and Realm, and that he ſhould be hanged, drawn and quartered, and forfeit all his Lands in Fee or Fee-tail, as he had the nineteenth day of *September*, in the tenth year of the Kings Reign, together with all his Goods and Chatels. But for that the ſaid Earl was come of noble Blood and Houſe, the King pardoned the hanging, drawing and quartering, and granted that he ſhould be beheaded; which was done accordingly.

But *Anno* 1 *Hen.* 4. the Commons do pray the reverſal of that Judgment given againſt him, and reſtoration of *Thomas* the Son and Heir of the ſaid *Richard* Earl of *Arundel*. *Rot. parl.* 1 H. 4. *n.* 109. 111.

Unto which the King anſwered, he hath ſhewed favour to *Thomas* now Earl, and to others, as doth appear.

The Commons do notwithſtanding pray, that the Records touching the Inheritance of the ſaid *Richard* Earl of *Arundel*, late imbezelled, may be ſearched for and reſtored.

Unto which was answered, *the King willeth.*

And their noble Predecessors in that Honourable House of Peers, the Lords Spiritual and Temporal in Parliament long before that, *videliget*, in the fifth year of the Reign of King *Edward* the Third, made no scruple or *meet* point or question in Law, whether the power of pardoning was valid and solely in the King after an Impeachment of the Lords in Parliament, wherein the Case of *Edmond Mortimer*, the Son of *Roger Mortimer* Earl of *March* a Peer of great Nobility and Estate, the Prelats, Counts, Barons, *& autres gentz du Parlement*, did in full Parliament, as the Record it self will evidence, Petition the King to restore the said *Edmond Mortimer* to his Blood and Estate which were to remain unto him after the death of his said Father, to whom it was answered by the King in these words; *Et sur ce nostre Seigneur le Roi chargea les ditz Prelats, Counts, & Barons en leur foies & ligeance quelx ils lui devoient & de puis ce que le Piere nostre Seigneur le Roi que ore est estoit*

Rot. parl. 5 E. 3. *n.* 16.

eſtoit murdre per le dit Counte de la Marche *& perſon procurement a ce quil avoit meſmes comdevant ſa mort que eux eant regarda le Roi en tiel cas lui conſilaſſent ce quil devoit faire de reſon audit Eſmon filz le dit Counte les queux Prelats, Countes, Barons & autres ouys & trete entre eux reſpondirent a noſtre Seigneur le Roi de Common aſſent que en regard a ſi horrible fait comme de murdre de terre & leur Seigneur lige quen faiſt unques ne avoient devant en leur temps ne nes devant venir en le eyde de dieu quils ne ſcavoient unore ſuger ne conſeiller ceque ſerrait affaire en tiel cas.*

Et ſur ce prievent a noſtre Seigneur le Roi quils poierent ent aver aviſement tanque au prochein Parlement la quelle priere le Roi ottroia & ſur ce prierent outre que noſtre Seigneur le Roi feiſt au dit Eſmon ſa bone grace a quoi il reſpond quil lui voloit faire mes cella grace vendroit de lui meſmes.

Sir *Thomas de Berkeley* (who Sir *William Dugdale* in his Book of the Baronage of *England*, found and believes to have been *Rot. parl.* 4 E. 3. *n.* 16.

a Baron) being called to account by the King, for the murder of his Father King *Edward* the Second; to whose custody at his Castle of *Barkeley*, he was committed, not claiming his Peerage, but pleading that he was at the same time sick almost to death at *Bradely*, some miles distant, and had committed the custody and care of the King unto *Thomas de Gourney & William de Ocle ad eum salvo custodiendi*, and was not guilty of the murder of the King or any ways assenting thereunto *Et de illo posuit se super Patriam*, had a Jury of twelve Knights sworn and impannelled in Parliament who acquitted him thereof, but finding that he had committed the custody of the King to the aforesaid *Thomas de Gournay & William de Ocle*, and that the King *extitit murderatus*, a further day was given to the said Sir *Thomas de Berkeley de audiendo Judicio suo in prox. Parliamento*, and he was in the interim committed to the custody of *Ralph de Nevil* Steward of the Kings Houshold.

Rot. parl. 5 E. 3. At which next Parliament *Prierent les Prelatz, Countes & Barons a nostre Seigneur le*

le Roi on the behalf of the ſaid Sir *Thomas de Berkeley*, that he would free him of his Bayl or Mainprize, whereupon the King charging the ſaid Prelats, Counts and Barons to give him their advice therein: *Le quel priere fuſt ottroia & puis granta noſtre Seigneur le Roi de reclef a leur requeſte que le dit Mons'r* Thomas *& ſes Mainpernors fuſſeient delivres & diſcharges de lure mainprize & ſi eſtoit Jour donne a dit* Thomas *de eſtre en prochein Parlement*, which proved to be a clear Diſmiſſion, for no more afterwards appeareth of that matter.

Neither after a fierce Impeachment in the ſaid Parliament of 21 *R.* 2. againſt *Thomas Arundel* Archbiſhop of *Canterbury* and Chancellor of *England*, of High Treaſon, upon which he was by that injuried Prince condemned and baniſhed, when as the Record ſaith, *Les dits Countz prierent au Roi ordenir tiel Jugement vers le dit Erceveſque come le cas demande & le Roi ſur ceo Recorda en le dit Parlement que le dit Erceveſque avoit eſte devant lui en preſence de certeines Seigneurs & confeſſor que en la uſe de la dite Commiſſion*

miſſion il ſey meſpriſe & lui miſt en la grace du Roi ſurquoi, the Judgment was given againſt the ſaid *Archbiſhop*, that he ſhould be baniſhed and forfeit all his Lands, Goods and Eſtate, when in the firſt year of the Reign of the uſurping King *H.* 4. that Archbiſhop not tarrying long in Exile, the minds of the Commons became ſo ſetled on the prevailing ſide, there was ſo ſmall or no oppoſition made by them againſt him, as the Duke of *York* and Earl of *Northumberland*, and others of the Blood of the ſaid Archbiſhop of *Canterbury* did in Parliament pray the King that the *ſaid Archbiſhop might have his recovery againſt* Roger Walden, *for ſundry Waſts and Spoils done by him in the Lands of the ſaid Archbiſhoprick*, which the *King granted, and thanked them for their motion.*

Rot. parl. 21 R. 2. The Biſhop of *Exeter* Chancellor of *England* at the aſſembling of the Parliament, taking his Text out of the Prophecy of *Ezekiel*, *Rexerit unus omnibus*, alledging the power that ought to be in Soveraign Kings and Princes whereby to govern, and the Obedience in Subjects to obey, and that all alienations

alienations of his Kingly Priviledges and Prerogatives were reaſſumable and to be Repealed by his Coronation-Oath, *Pour quoi le Roi ad fut aſſembler le Eſtatz de Parlement a ceſt faire pour eſtre enformer ſi aſcun droitz de ſa Corone ſoient ſuſtretz ou amemuſer a fin que par leur bon advis & diſcretion tiel remedie puiſſe eſtre mis que le Roi puiſſe eſteer en ſa libertie ou poir Comme ſes Progenitors ont eſte devant lui & duiſſent de droit non obſtante aſcun ordinance au contraire & ainſi le Roi as Tener, Et les governera,* whereupon the Commons made their Proteſtation, and prayed the King that it might be Inrolled, that it *was not their* intente ou volunte *to Impeach or Accuſe any Perſon in that Parliament* ſans congie du Roi, And thereupon the Chancellor by the Kings command likewiſe declared, That *Noſtre Seigneur le Roi conſiderant coment pluſieurs hautes offenſes & meſfaits ont eſtre faitz par le People de ſon Roialme en contre leur ligeance & l'Eſtat noſtre Seigneur de Roi & la loie de la terre devant ces heutes dont ſon People eſtiet en grant perill & danger de leie & leur corps & biens & voullant ſur ce de ſa royalle benignite mouſtre & faire grace a ſon dit People a fyn quilz*

ayent le greindre corage & volonte de bien faire & de leure mieux porter devors le Roi en temps avenir ſi voet & grante de faire & eaſe & quiete & ſalvation de ſon dit People une generalle Pardon a ces liges forſpries certaines pointz limitez par le ſamant la ſuite al partie forſpris cyn quont perſones queux plaira au Roi nomer & tour ceux qui ſerront Empecher en ce preſent Parlement & dit auſtre que le dit Roi voet que plein droit & Juſtice ſoyent faitz a Chaſcun de ſes liges qui en voilent complandre en ceſt Parlement & ad ordiner & aſſigner Receivers & Triers des Petitions en ceſt Parlement.

And did in purſuance thereof in full Parliament excuſe, the Duke of *York*, the Biſhop of *Worceſter*, Sir *Richard le Scroop* then living, *William* late Archbiſhop of *Canterbury*, *Alexander* late Archbiſhop of *York*, *Thomas* late Biſhop of *Exeter*, and *Michael* late Abbot of *Walton* then being dead, of the Execution and intent of the Commiſſion made in the Tenth year of his Reign, as being aſſured of their Loyalty, and therefore by Parliament reſtored them to their good Name.

And

And it is more than a little probable that the Prelates, Counts and Barons in that Honourable Houſe of Peers in Parliament, did well underſtand that the King was a fit, and the only perſon to Petition unto for that Pardon, Diſcharge or Diſmiſſion amounting to a Pardon, and did not think it to be either legal or rational to Petition the People and their Fellow Subjects, upon a ſuppoſed incredible and inviſible Soveraignty, no man knows when or how radicated and inherent in them.

The Decree of the great *Ahaſhuerus* that Reigned from *India* to *Ethiopia*, over one hundred twenty ſeven Provinces, whoſe Laws were holden to be irrevocable, was reverſed for the preſervation of the *Jewiſh* Nation upon the Petition of Queen *Eſther*, and his holding *out his Golden Scepter unto her.* *Eſther* ca. 1, 3, 5, 8.

The unquiet People of *Athens* now come enough under a *Mahometan* Slavery, would not again wiſh for *Draco*'s bloody repealed Laws, without the mercy of a Prince to

moderate them according to the Rules of a prudent and diſcerning mercy.

1 *Reg.* 3. Which made the Goodneſs and Wiſdom of *Solomon*, ſo extraordinarily eminent in his determination in the Caſe betwixt the two Mothers claiming one Child.

Neither can a People ever be, or ſo much as think themſelves to be in any condition of happineſs when their Laws ſhall be inflexible and hard hearted, and there ſhall be no Superior Power to allay the rigidneſs or ſeverity of them.

No Cities of Refuge or *Aſylums* to fly unto, upon occaſion of Misfortunes, which God himſelf ordained for his Choſen People of *Iſrael.*

And therefore when *Juries* may erre or play the Knaves, be Corrupt, Malicious or Perjured, and Judges miſtaken, our Judges have in their doubtings ſtayed the Execution until they could attend the King for his determination.

Where-

Whereupon his Pardons did not ſeldom enſue, or a long Leaſe for Life was granted to the penitent Offender, it being not amiſs ſaid by our old *Bracton*, That *Tutius eſt reddere rationem miſericordiæ quam Judicii*, the *Saxons* in doubtful Caſes appealed to God for diſcovery, by *Kemp* or *Camp*, Fight, Fire or Water *Ordeal*, which being now aboliſhed and out of uſe, requires a greater neceſſity of the right uſe of pardoning; for Sir *Edward Coke* ſaith, *Lex Angliæ eſt Lex miſericordiæ*, like the Laws of Scripture wherein Mercy is not oppoſite unto Juſtice but a part of it, as 1 *John* 19. *Pſalm* 71. 2. *Jer.* 18. 7, 8, 9, 10. *Ezek.* 33. 13, 14. and it hath not been ill ſaid, that *Juſtitia ſemper mitiorem ſequitur partem*, for it is known that a Judge ſince his Majeſties happy Reſtoration, who were he now living, would wiſh he had made a greater pauſe than he did in a Caſe near *Brodway-Hills*, in the County of *Worceſter* or *Gloceſter*, where a Mother and a Son were, upon a ſeeming full evidence, Hanged for the Murther of a Father, who afterwards

Bracton.

Cokes *Inſtit.* 2. 315.

when it was too late, appeared to be living.

And Posterity by the remembrance of Matters and Transactions in Times past, may bewail the Fate of some Ministers of State, who have been ruined by being exposed to the Fury of the People, (who did not know how or for what they accuse them) and left to the never to be found Piety or Wisdom of a Giddy, Incensed and Inconsiderate accusing Multitude, and Hurrying on the reasonless or little Wit of one another.

And consider how necessary it had been for the pious good Duke of *Somerset*, in the Reign of King *Edward* the Sixth to have had his Pardon, when at his Tryal neither his Judges, nor the prevalency of the faction that would have rather his Room than his Company, nor himself could remember to put him in mind to demand the benefit of his Clergy.

Or how far it would have gone towards

wards the prevention of that ever to be wailed National Blood-ſhedding miſeries and devaſtions, which followed the Murthers of the Earl of *Strafford*, and Archbiſhop *Laud*, if their Innocencies had but demanded and made uſe of his late Majeſties Pardon.

Or what reaſon can be found why a Pardon after an Impeachment of a particular Perſon by an Houſe of Commons in Parliament, or an Houſe of Peers joyning or conſenting therewith, ſhould not be as valid and effectual in Law, Reaſon and good Conſcience.

As the very many General Pardons and Acts of *Oblivion*, which have been granted by our Kings and Princes to their People for Extortions of Sheriffs Bayliffs, *&c.* together with many other Miſdemeanours, Grievances and Offences, often complained of in many of our Parliaments, as the Records thereof will witneſs, whereby they have acquitted and given away as much of their own juſt Rights and Regal Revenues

venues to their Subjects, than the Aids and Subsidies, which they have Contributed towards his Preservation, and in His their own, when they have not had a King or Prince but hath been, as more especially this our present Sovereign,

Piger ad pœnas ad præmia velox.

FINIS.

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